

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

Appeal of Upper IPC Dam

Docket No.: 04-05 WC

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MAY 26 2005

JOINT MOTION TO CONTINUE WATER COUNCIL APPEAL HEARING

NOW COME the parties to this matter, by and through their respective counsel, and submit this Joint Motion to Continue Water Council Appeal Hearing and in support thereof state as follows:

1. This appeal involves an Administrative Order ("AO") issued by the Department of Environmental Services (DES) to Freudenberg NOK ("the Appellant"), concerning the condition of the Upper IPC dam in Bristol, New Hampshire.
2. The Appellant appealed the AO asserting, among other arguments, that it is not the owner of the dam in question. The appeal is currently pending before the Water Counsel.
3. Via Notice dated March 29, 2005, an Appeal Hearing before the Water Council was scheduled for June 8, 2005.
4. A central issue in this matter is the ownership of the dam in question.
5. Specifically, allegations have been made, that the Appellant, the State, or Public Service Company of New Hampshire (PSNH) is the owner of the dam. As such, ownership of the dam, to the extent it is disputed, must be determined in order to confirm that the AO was served on the correct party.

6. On or about May 2, 2005, the State filed a Petition for Declaratory Judgment and to Quiet Title in the Grafton County Superior Court against the Appellant and PSNH, seeking a ruling from the Superior Court regarding ownership of the dam. The Petition has been docketed in said Court as 05-E-0157. The Court has since issued Orders of Notice for Service on the Appellant and PSNH. The State is currently in the process of effectuating service.
7. Given the importance of the issue of dam ownership to the underlying appeal before the Water Council and given the pendency of the Declaratory Judgment action concerning dam ownership before the Superior Court, it makes sense to continue the Appeal hearing pending a final ruling or order by the Superior Court.
8. As such, in the interest of time, efficiency and justice, the parties request a continuation of said hearing pending a final ruling or order on the State's Petition for Declaratory Judgment and to Quiet Title.

WHEREFORE, the parties respectfully request that:

- A. The Appeal Hearing scheduled for June 8, 2005 be continued pending a final ruling or order on the State's Petition for Declaratory Judgment and to Quiet Title; and,

B. For all other relief as is just and equitable.

Respectfully submitted,

State of New Hampshire
Department of Environmental
Services,

By its attorneys,
Kelly A. Ayotte,
Attorney General,

Dated: May 25, 2005

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Freudenberg, NOK,

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Dated: May 24, 2005

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